



General Assembly

January Session, 2011

Raised Bill No. 1113

LCO No. 4109

04109____ENV

Referred to Committee on Environment

Introduced by:
(ENV)

***AN ACT ESTABLISHING A CONNECTICUT COMMERCIAL TANK
INSURANCE ACCOUNT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-449a of the general statutes is amended by
2 adding subdivision (8) as follows (*Effective October 1, 2011*):

3 (NEW) (8) "Oil terminal facility" means: (A) Any facility and related
4 appurtenances, located in, on or under the surface of any land or
5 water, including submerged lands, that is used or capable of being
6 used for the purpose of transferring, processing, refining or storing oil,
7 and (B) any vessel that travels to or from a facility described in
8 subparagraph (A) of this subdivision with a permanently fixed
9 location and that engages in a vessel-to-vessel transfer of oil. "Oil
10 terminal facility" does not include any vessel engaged in oil spill
11 response activities, any facility that stores or has a capacity to store
12 sixty-three thousand gallons or less of oil, or any facility that is not
13 used for the transfer of oil to or from the waters of this state.

14 Sec. 2. (NEW) (*Effective October 1, 2011*) (a) There is established an
15 account within the General Fund to be known as the Connecticut

16 Commercial Tank Insurance account. Said account shall be used by the
17 Commissioner of Environmental Protection to: (1) Assist owners of
18 commercial underground petroleum storage tanks to meet the federal
19 requirements to possess evidence of financial responsibility, the ability
20 to demonstrate the financial ability to clean-up discharges and
21 compensate third parties for damages sustained as a result of
22 discharges from underground petroleum storage tanks, as required by
23 42 USC 6991b, and (2) for carrying out the purposes described in this
24 section. Said account shall contain not more than twenty million
25 dollars. The commissioner shall deposit in said account all
26 assessments, fees and charges required pursuant to this section. The
27 commissioner shall issue payment from such fund for all expenses as
28 described in subsection (h) of this section. Funds in said account may
29 only be used for the purposes specified in this section and may not be
30 diverted for any other use by the department, the Governor or the
31 General Assembly.

32 (b) Any funds in the Connecticut Commercial Tank Insurance
33 account that are not needed to meet the current obligations of the
34 department in the exercise of its responsibilities pursuant to this
35 section may be invested in accordance with any other provision of
36 state or federal law. Any interest earned on such investments shall be
37 deposited in said account by the commissioner.

38 (c) There is established a fee of forty-two cents for each barrel of
39 gasoline that the owner or operator of an oil terminal facility in this
40 state transfers to another facility in this state and for each barrel of
41 gasoline that any person transports into this state. Such fee shall not be
42 assessed on any petroleum product that is exported from this state.
43 Such fees shall be paid once per month and such payment shall be
44 certified to the commissioner. Any such fee shall be deposited in the
45 Connecticut Commercial Tank Insurance account established pursuant
46 to subsection (a) of this section.

47 (d) Each owner or operator of any underground oil storage facility

48 that stores motor fuel or that is used in the marketing and distribution
49 of oil shall pay an annual fee of one hundred fifty dollars for each such
50 tank. Such fee shall be paid to the commissioner who shall deposit
51 such fee in the Connecticut Commercial Tank Insurance account
52 established pursuant to subsection (a) of this section.

53 (e) Anytime the balance in said account is projected by the
54 commissioner to be twenty million dollars or more, the fees described
55 in subsection (c) of this section shall be suspended. The commissioner
56 shall provide a notice of such suspension not later than fifteen days
57 prior to any such suspension. Such fees shall not be reinstated by the
58 commissioner until said account is projected to contain ten million
59 dollars or less. The commissioner shall provide not less than fifteen
60 days notice prior to reinstating such fees.

61 (f) Any fee assessed by the commissioner pursuant to subsection (c)
62 of this section shall be due on or before the last day of the month
63 immediately following the month in which such oil was transferred or
64 transported into the state. Any person who fails to pay any such fee by
65 said date shall pay a penalty of ten per cent of the amount of such fee.
66 The commissioner may waive such penalty for good cause shown. For
67 the purposes of this section, good cause may include, without
68 limitation, any event that may not be reasonably anticipated or events
69 that were not under the control of such person.

70 (g) Any person who pays a fee pursuant to subsection (c) of this
71 section on petroleum products that were exported from this state shall
72 receive reimbursement from the commissioner upon presentation to
73 the commissioner of documentation of such payment and exportation.

74 (h) Funds in the Connecticut Commercial Tank Insurance account
75 may be disbursed by the commissioner for the following purposes: (1)
76 Administrative expenses, personal services and equipment costs of the
77 department related to the administration and enforcement of this
78 section, provided total disbursements for such personal services may
79 not exceed one million dollars per fiscal year, (2) all costs involved in

80 the payment of approved claims pursuant to this section, (3) all costs
81 related to hearings, independent hearing examiners and independent
82 claims adjusters for any claim paid pursuant to this section, (4) all costs
83 of insurance incurred by the state to extend or implement the benefits
84 of the account, and (5) all payments to or on behalf of claimants
85 eligible for coverage pursuant to subsection ____ of this section, for
86 expenses greater than any applicable deductible.

87 (i) Whenever the potential liabilities of said account exceed
88 projected income for the account, the commissioner shall notify the
89 joint standing committee of the General Assembly having cognizance
90 of matters relating to insurance not later than thirty days after
91 determining that a shortfall will occur and shall submit
92 recommendations for keeping said account actuarially sound and in
93 compliance with 42 USC 6991b.

94 (j) The commissioner shall seek recovery of any sum of one million
95 dollars or more per occurrence that is paid from the fund, pursuant to
96 this section, in connection with any prohibited discharge. Such
97 recovery shall seek interest on such sum at the rate of fifteen per cent
98 per year from the date of expenditure unless the commissioner
99 otherwise determines such interest should not be sought. If a request
100 for reimbursement to the fund is not paid within thirty days of
101 demand, the commissioner shall refer the request to the Attorney
102 General for collection of such reimbursement.

103 (k) Upon petition of any responsible party, the commissioner may,
104 after a hearing in accordance with chapter 54 of the general statutes,
105 waive the right to reimbursement to the fund if the commissioner finds
106 that the occurrence was the result of an act of war or an act of God.

107 (l) Any person who suffers property damage or actual economic
108 damages, including, but not limited to, loss of income and medical
109 expenses directly or indirectly caused by the discharge of oil from an
110 underground oil storage facility or an above-ground oil storage facility
111 may apply to the commissioner not later than two years after the

112 occurrence of such discharge or the discovery of such injury or
113 damage, whichever date is later. Such application shall state the
114 amount of damage that such claimant suffered as a result of such
115 discharge. Such application shall be on a form as prescribed by the
116 commissioner. The commissioner, upon petition and for good cause
117 shown, may waive such two-year limitation. Any such claim shall state
118 all claimed damages in one such application. Any damages omitted
119 from any claim at the time an award is made shall be waived unless
120 such damage was not known at the time such claim is made. No such
121 claim shall include expenditures for the preparation and prosecution
122 of such claim, including, but not limited to, legal fees or real estate
123 appraisal fees.

124 (m) The commissioner may contract with insurance professionals to
125 process any claim received pursuant to subsection (l) of this section.

126 (n) When the party responsible for any damage that is the subject of
127 a claim filed pursuant to subsection (l) of this section is known, the
128 commissioner shall send such responsible party, by certified mail,
129 notice of such claim and include written notice of the right to join the
130 claims proceeding as an interested party. Such responsible party shall
131 provide the commissioner with written notification of intent to join
132 such claims proceeding not later than ten business days after receipt of
133 such notice. If such responsible party joins as an interested party and
134 formally agrees in writing to the amount of the damages claimed, such
135 amount shall be binding on the responsible party for any amount of
136 reimbursement to the account that is sought by the commissioner.
137 Absent any such agreement by the responsible party to pay such
138 claimed damages and following the commissioner's reasonable efforts
139 to determine the responsible party, the commissioner and the claimant
140 may agree as to the amount of damages to be paid to the claimant from
141 the account. Such agreed upon amount shall be certified by the
142 commissioner and the State Treasurer shall pay such amount to the
143 claimant from said account. In the event the commissioner and the
144 claimant are unable to agree as to the amount of damages to be paid to

145 the claimant, the claim shall be referred to an independent hearing
146 examiner as described in subsection (v) of this section.

147 (o) Any claimant shall take all reasonable measures to prevent and
148 minimize damages suffered by such claimant as a result of a discharge
149 of oil. Such reasonable measures shall include, but not be limited to,
150 title searches and site assessments for the acquisition of commercial or
151 industrial properties.

152 (p) No claim described in subsection (l) of this section shall include
153 any amount the claimant recovered or seeks to recover through
154 settlement or institution of a civil action against the party responsible
155 for such discharge. Any court that awards damages to a claimant as a
156 result of a discharge as described in this section shall reduce such
157 award by any amounts received by the claimant from said account to
158 the extent such amounts would compensate the claimant twice for the
159 same damage or injury.

160 (q) No award for damages issued by the commissioner pursuant to
161 subsection (l) of this section shall exceed two hundred thousand
162 dollars.

163 (r) No award issued by the commissioner pursuant to subsection (l)
164 of this section that includes damages for harm to real property shall
165 include any damages for the devaluation of such real property that is
166 based on the loss of a water supply if the commissioner finds that a
167 public or private water supply is available and the property owner did
168 not agree to be served by that public or private water supply.

169 (s) A claimant shall not be eligible for compensation under this
170 subsection for costs, expenses or damages related to a discharge if the
171 commissioner determines that the claimant is a responsible party.

172 (t) The commissioner may dismiss a claim filed pursuant to
173 subsection (l) of this section if such claim is untimely or for failure of
174 the claimant to provide any information necessary to process such

175 claim not later than sixty days after such claimant receives written
176 notice that such information is required. Any such dismissal may be
177 appealed to the Superior Court in accordance with section 4-183 of the
178 general statutes.

179 (u) Whenever the commissioner learns of a possible claimant, as
180 described in subsection (l) of this section, the commissioner shall send
181 a letter by certified mail to inform such person of the claim procedures
182 described in this section. Such letter shall contain the name and
183 telephone number of a contact person at the department available to
184 explain such claims procedures.

185 (v) The commissioner shall establish a disputed claims process
186 within the department for the handling of claims filed pursuant to
187 subsection (l) of this section that are not agreed upon by the claimant
188 and the commissioner. Such process shall consist of the following: (1)
189 The hearing of such disputed claims by an independent hearing
190 examiner appointed by the commissioner, (2) to the extent practicable,
191 the hearing of all claims arising from or related to a common discharge
192 by the same independent hearing examiner, (3) hearings that are
193 informal and for which the rules of evidence shall not apply, and (4)
194 authority for the independent hearing examiner to administer oath,
195 require by subpoena the attendance and testimony of witnesses and
196 the production of books, records and other evidence relevant to the
197 issues presented to the independent hearing examiner for
198 determination.

199 (w) Any determination made by the independent hearing examiner
200 pursuant to subsection (v) of this section shall be final for purposes of
201 appeal to the Superior Court in accordance with section 4-183 of the
202 general statutes.

203 (x) There shall be a rebuttable presumption that any determination
204 made by the independent hearing examiner pursuant to subsection (v)
205 of this section is valid in any subsequent reimbursement action
206 pursued by the commissioner pursuant to this section.

207 (y) The commissioner shall certify any damage award issued by the
208 independent hearing examiner pursuant to subsection (v) of this
209 section. Such award shall be paid to the claimant by the State Treasurer
210 from said account.

211 (z) The commissioner may adopt regulations in accordance with the
212 provisions of chapter 54 of the general statutes to implement the
213 provisions of this section.

214 Sec. 3. Subsection (b) of section 22a-449d of the general statutes is
215 repealed and the following is substituted in lieu thereof (*Effective*
216 *October 1, 2011*):

217 (b) The board shall consist of the Commissioners of [Environmental
218 Protection] Economic and Community Development and Revenue
219 Services, the Secretary of the Office of Policy and Management and the
220 State Fire Marshal, or their designees; one member representing the
221 Connecticut Petroleum Council, appointed by the speaker of the
222 House of Representatives; one member representing the Service
223 Station Dealers Association, appointed by the majority leader of the
224 Senate; one member of the public, appointed by the majority leader of
225 the House of Representatives; one member representing the
226 Independent Connecticut Petroleum Association, appointed by the
227 president pro tempore of the Senate; one member representing the
228 Gasoline and Automotive Service Dealers of America, Inc., appointed
229 by the minority leader of the House of Representatives; one member
230 representing a municipality with a population greater than one
231 hundred thousand, appointed by the Governor; one member
232 representing a municipality with a population of less than one
233 hundred thousand, appointed by the minority leader of the Senate; one
234 member representing a small manufacturing company which employs
235 fewer than seventy-five persons, appointed by the speaker of the
236 House of Representatives; one member experienced in the delivery,
237 installation, and removal of residential underground petroleum
238 storage tanks and remediation of contamination from such tanks,

239 appointed by the president pro tempore of the Senate; and one
240 member who is an environmental professional licensed under section
241 22a-133v and is experienced in investigating and remediating
242 contamination attributable to underground petroleum storage tanks,
243 appointed by the Governor. The board shall annually elect one of its
244 members to serve as chairperson.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2011</i>	22a-449a
Sec. 2	<i>October 1, 2011</i>	New section
Sec. 3	<i>October 1, 2011</i>	22a-449d(b)

Statement of Purpose:

To establish a Connecticut Commercial Tank Insurance account and attendant claims procedures for certain oil discharges.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]